(1) Supreme Court, U.S.
FILED

171

NO 10-375 JUN 3 - 2010

~~OFFICE OF THE CLERK~~

IN THE

SUPREME COURT OF THE UNITED STATES

Bernice Perez, *Petitioner,*

v.

Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002 Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE,

Respondent.

On Petition for Writ of Certiorari
New York State Supreme Court, 2nd Cir.

PETITION FOR A WRIT OF CERTIORARI

Bernice Perez, Pro se
45 Oakland Avenue
Mount Vernon, N Y 10552
(347) 346-1920 (914) 619-8684

I

QUESTIONS PRESENTED

The following questions are presented by the petitioner.

1. Whether Petitioner honestly & truthfully receive "Fair Justice".
2. Whether it is Fair Justice for a U.S. Citizen to have their home fraudulently, forcibly taken by a tainted judicial process.
3. Prima Facie Case: Legal Question. Whether Plaintiff provided truthful supporting documents to substantiate their claim via Summons & Complaint; legal entitlement to sue via Mortgage Assignment; obtainment of Summary Judgment and entitlement for Judgment of Foreclosure and Sale.
4. Whether Plaintiff with full awareness of their actions under the Penalty of Perjury summon Petitioner into a court of Law
   Under Fraudulent, Negligent,
   Misrepresentation/concealment; no Legal
   Standing and thus prosecute and violate Petitioner's Civil and Legal Rights.

5. Major Legal & Constitutional Question whether Plaintiff was justified in their actions ,provided valid evidences, proof to substantiate and justify this matter if so why are we still here in any court of law almost seven (7) years later on the same matter.

6. Whether an American citizen has a constitutional right to petition the United States Supreme to review, investigate crimes committed against her.

7. Does an American citizen have a Statutory right to petition the United States Supreme Court to review, investigate crimes committed against her?

8. Has the New York State Court of Appeals, 2nd Circuit so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the Appellate Division-2nd Department, as to call for an exercise of this Court's supervisory power?

9. Whether The New York Supreme Court Hon. Linda S. Jamieson acted improperly and abused its discretionary power, particularly regarding the evidence presented by petitioner and with a lack of appropriate judicial clarity in improperly granting two

(2) conflicting decisions/Order and Granting Summary Judgment in Plaintiff's favor.

10. Did The New York Supreme Court of Westchester County, Hon. Linda S. Jamieson Err in the Granting of Summary Judgment by two (2) conflicting Decisions & Orders and violate Petitioner's constitutional and legal rights.

11. Whether Westchester County Supreme Court #11365/03 Hon. Linda S. Jamieson for Summary Judgment by evidence, issues rendered second Decision create a legal & Constitutional conflict with first Decision? A point that is sufficient either in itself or in Connection with the other points to resolve the entire case.

12. Whether Court violated Petitioner's Constitutional Rights to defend and Protect In the dismissal of Petitioner's factual evidence, denying and striking affirmative defenses, objections and protests raised to Plaintiff's unjust actions.

13. Whether Petitioner's rights legally and constitutionally are relinquish or compromised by the Court, attorneys retained to defend and protect such rights through Prosecutorial Misconduct.

IV

14. Did the Courts (Above) through its deliberate fail to consider all relevant facts which were called to the courts attention, improperly dismissed.

15. Whether Petitioner suffer usual and cruel Punishment through the Due Process Clause of the XIV Amendment.

16. Whether The New York Supreme Court Hon. Arazio Bellatonio act improperly and abused its discretionary power, particularly
Regarding the evidence presented by petitioner and with a lack of appropriate judicial clarity in improperly granting decision and Order in Plaintiff's favor for Foreclosure & Sale.

17. Did The New York Supreme Court of Westchester County, Hon. Arazio Bellatonio Err in Issuing an Order to Stay the Foreclosure and Sale after his Order & Decision of Foreclosure and Sale?

The Parties to the proceedings:

The following list identifies all of the parties appearing in the caption of the case on the cover page and here and below:

New York State Court of Appeal, Albany, New York: were By Briefs & Appendix

Petitioner, Bernice-Perez, Pro se
Michael S. Hanusek, Esq., Attorney for Plaintiff

Respondent Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust
2002_A Asset-Backed Certificates, Series 2002-A,
WITHOUT RECOURSE

Presiding:

Hon. Jonathan Lippman, Chief Judge.

New York Appellate Division-Second Department Brooklyn, New York: were By Briefs & Appendix

Petitioner, Bernice Perez, Pro se

Michael S. Hanusek, Esq., Attorney for Plaintiff

Respondent Wells Fargo Bank, Minnesota, National Associations, As Trustee for Registered Holders of Option One Mortgage Loan Trust 2002_A Asset-Backed Certificates, Series 2002-A, WITHOUT RECOURSE

Presiding: E. Rivera J.P., Howard Miller, John M. Leventhal, Cheryl E. Chambers, JJ.,

The Additional parties are:

N Y S Supreme Court, in Westchester County, Hon. Linda S. Jamieson, Presiding

Attorneys of Record for Plaintiff

Attorney Greg Tabakin., Esq., Attorney Mikelle V. Komor, Esq.

Bernice Perez, Defendant

Atty. Carol Marks, Esq., Harry Stokes, Esq., Patricia A. Mooney Esq. Attorneys of Record for Appellant

VII

CORPORATE DISCLOSURE

Wells Fargo is a banking corporation duly licensed, organized and existing pursuant to the laws of the United States of America states.

The United States of America, The people of the State of New York, The State Tax Commission of the State of New York, the industrial Commissioner of the State of New York, and all other agencies or instrumentalities of the federal, State or local government (however designated), if named as defendants, are made parties solely by reason of the facts set forth.

Wells Fargo is a HUD-Approved Lender
US Department of Housing

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85 NY2d 20.

Cite: Teller v Bill Hayes, Ltd., 213 AD 2d 141.

Elder Abuse Law

Cite: California Civil Code § 3345 subdivisions (f),(g). Sec. 1761.

Cite: Federal Older Americans Act of 1965: (See Heisler,1991).

Cite: Vulnerable Elder Rights Protection Program: Lauchs & Pillemer, 1998). (Stiegel, 1995; Moskowitz 1998).

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Cite: Title VI: Guardians 463 U.S. 582,642 n.13; TARP,

The Supreme Court Held: Guardian, supra: Alexander v. Choate, supra. Villanueva v. Carere, 85 F... 3d 481(10th Cir. 1996).

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28 C.F.R. §42 104 (b)(2) Receipt of TARP Taxpayer, Homeowners Money pursuant to such regulations (Wells Fargo) receive Federal Funding (TARP) taxpayer dollars enter into standard agreements or provide assurances require certification that (Wells Fargo will comply with the implementing regulations and operate under the color of the Law and the Constitution under Title VI:

Guardians 463 U.S. 582,642 n.13;

OPINIONS BELOW

The Opinion of the Court of Appeals:

#2010-331 is final

The Opinion of the Appellate Division:

#2008-09852 is final

Published: The Appellate-Division-2nd Department decision June 25, 2008 to lower court Order & Decision Hon. Linda S. Jamieson Granting Summary Judgment December 16, 2005. 1st Appeal #2006-851 Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590).

JURISDICTION

Notice is given that Petitioner (Bernice Perez) hereby petitioning the United States Supreme Court which this Court has jurisdiction for a Writ of Certiorari pursuant to: **Article** III Section 2 of the Constitution of the United States: 28 U.S.C. §1651(a)(b) Constitution, Amendment II. for Review of the Decision of the Opinions expressed on the

dates noted upon the Grounds and controversies to which the United States shall be a party are not in conformity with Constitutional or legal law and is unwarranted by the evidence presented to the gravity involving this total miscarriage of Justice.

Constitutional Law on Judicial Review: Marbury v. Madison, 5 U.S. (1 Cranch)137 (1803) it is the

"The province and the duty of the judicial department to say what the law is."Id. at 177-178.

> 1st Amendment Right: " Congress shall make no law abridging the right to petition the government for a redress of grievances".

Issuance by the Court of an writ authorized by 28 U.S.C. §1251 Will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief

cannot be obtained in any other form or from any other court.

Ripeness Doctrine 331 U. S. 549

Constitutional law under which the United States Supreme Court, in accordance with its policy of self-restraint, will not decide cases in advance of the necessity of deciding them.

> "Because the State has the power to stop the infringement of individual rights, its failure to do so constitutes a state decision to permit the violations.

Court Declared: Denying includes inaction as well as action the omission to protect as Well as the omission to pass laws for protection."

All the points that should have been fully addressed and justified by Respondent Wells Fargo/Option One and the lower courts before entry of a final adjudication upon the

rights of the Petitioner in this matter have not been nor never have been fully resolved by Fair Justice.

28 U.S.C. §1251 Constitution, Amendment II. The Supreme Court shall have original and

Exclusive Jurisdiction of all controversies between citizens of different States:

Petitioner: Bernice Perez resides in:

State of New York State, Mount Vernon, New York, Westchester County.

Respondent: Wells Fargo/Option One Mortgage is organized under the laws of the State of California with its principal place of business in: Irvine California engaged in the business of

Issuing mortgage loans throughout California, and throughout the United States, that violate

The laws identified herein: Wells Fargo Legally chartered in: Sioux Falls, South Dakota.

STATEMENT OF CASE OF PETITIONER

Agency/Case origination: Index #11365/03

N YS Supreme Court, Westchester, County

111 Martin Luther King Jr. Blvd., White Plains, New York.

Hon. Linda S. Jamieson

COURT OF APPEALS#2010-331

Date of Decision: May 6, 2010

Appellate-Division #2008-09852

Date of Decision: Feb. 9, 2010

Appeal taken from: N Y S Supreme Court, Westchester County, Hon. Arazio R. Bellatonio, And J.S.C.Dated: September 24, 2008.

1. Jurisdictional stat – Civil Matter-Judgment of Foreclosure & Sale
2. Appeal taken To: Appellate Division -2nd Department.
3. Designate any statues, 5601, CPLR 5601(b) 1, CPLR 5601 (b) 2.

   Article III Section 2 of the Constitution of the United States: 28 U.S.C. §1651 U.S. Constitution, Amendment I.

   Ninety (90) Days from due deliberation Court of Appeal 2010-331- Denied Petitioner's

   papers for Review: CPLR 5501 Motion Leave to Appeal.

ISSUES TO BE RAISED TO THE COURT

Orders & Determination

CIVIL RIGHTS

"An injustice anywhere creates and injustice everywhere".

Dr. Martin Luther King.

Justice means TRUTH, fair and proper administration of laws concerned with the relations between persons and especially with fairness in the exchange of goods and the fulfillment of contractual obligations.

Fair Justice is not based on abuse ,violation of American citizen's legal or constitutional rights to achieve any goal by misuse, unethical, deceptive behavior or, Fraudulent documentation.

Racial Discrimination: Civil Rights Act of 1964 Violation- Under 14th Amendment: Equal Right to Home Ownership; Due Process and Equal

Protection re: Nationality, race, age and Gender,

42 U.S.C. §§1981,200h.

Cite : Inside Mortgage Finance.

Cite: Center for Responsible Lending Statics 2006.

Cite: National Community Reinvestment Coalition Statics.

Cite: Federal Reserve Board-Conclusion

Cite: The United States Inspector General Report.

Business Law §321: Consumer Protection from Deceptive Business Practices.

Violation Business Law § 349 : General

Statue subdivision 12 section 63 (b) (1) (2) of the executive law.

General Business Law § 349(a): deceptive acts, practices in conduct of any business in this State (NY) is unlawful.

Penalty for offenses against elderly:

Wells Fargo target elderly single African American women. I am a 62 year old Female Retired Computer Operations Manager, Verizon who was not a irresponsible home buyer and purchase a home I could not afford.

Cite: Karlin v VF Am, 93 NY2d 282; New York Univ. v Continental Ins. Co., 87 NY2d 308).

New York Univ. v. Continental Ins. Co.. Supra; Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 NY2d 20.

Cite: Teller v Bill Hayes, Ltd., 213 AD 2d 141.

Elder Abuse Law:

Cite: California Civil Code § 3345 subdivisions (f),(g). Sec. 1761.

Cite: Federal Older Americans Act of 1965: (See Heisler, 1991).

Cite: Vulnerable Elder Rights Protection Program: Lauchs & Pillemer, 1998). (Stiegel, 1995; Moskowitz 1998).

Intentional Discrimination/Disparate Treatment, impact & effect: Model Penal Code §224.7(5).

Elston, Supra, 997 F 2d at 1406.

(Quoting Williams v. City of Dotham, Alabama, 745 F 2d 1406 14: (11"Cir 1964).

Class Action Complaints against: Wells Fargo Mortgage.

New York Group filed w/Federal Regulators to block Wells Fargo & Co

Acquisition of Seattle based Pacific-Northwest Bancorp, due to denying

Home loans to minority borrowers and "predatory Lending Practices.

Illinois, Attorney General Lisa Madigan Suing Wells Fargo targeting African-Americans and Latino.

1. Roddy, Klein & Ryan, Boston. Mass. Class Action-Wells Fargo.
2. Complaint filed California, San Francisco Superior Court by Attorney Edmund G. Brown, and Lawsuit against Wells Fargo -False & Deceptive Practice.
3. The Association of Community Organization for Reform Now: Lawsuit alleging San-Francisco based

4. Wells Fargo inaccurately reported Loan balances for Calif. Customers to Credit Reporting agencies.
5. NAACP-Class Action Suit, Baltimore Maryland-Wells Fargo.

Consequences of Wells Fargo Practices & Intent: Lau v. Nichols 414 U. S. 563, 568 (1974).

Respondent Wells Fargo is not a benefit to the housing Industry but a strong negative destructive abusive force to Families & Communities of African-American &

Latino but not as much Caucasian families by their habitual behavior.

This is a bank that is not to "big to fail but needs to fail and be brought down".

Wells Fargo and /or their Counter parts, Attorneys add to the break-down, eroding belief and trust for obtainment

Of fair justice in the judicial system by their deceptive business practices and tactics.

"That justice is blind, unobtainable and only opens her eyes for those she wants to'.

TITLE VI & Title VII: The Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Baldwin v. University of Texas Medical Branch at Galveston, 945 F. Supp. 1022, 1031(S.D. Tex. 1996).

Brantley v. Independent School District No. 625, St. Paul Public Schools, 936 F. Supp. 649, 658 n. 17 (D. Minn. 1996).

The Supreme Court Held: Guardian, supra: Alexander v. Choate, supra.
Vilanueva v. Carere, 85 F.. 3d 481(10th Cir. 1996).

New York Urban League v. New York 71 F. 3d 1031, 1036 (2nd Cir. 1985).

Chicago v. Lindley, 66 F 3d 819 (7th Cir. 1995); David K.v. Lane, 839 F. 2d 1265(7th Cir. 1988).

Gomez v. Illinois State Bd. Of Education 811 F. 2d 1030 (7th Cir. 1097).

Georgia State Cont. v. Georgia 775 F. 2d. 1403 (11th Cir. 1985).

Larry P. v. Riles, 793 F. 2d. 969 (9th Cir. 1984).

Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346, 351 (M.D. Ala.

Civil Rights Violation: Fair Housing Act, 42 U.S.C. §3601 et seq.

Wells Fargo Bank, NA has engaged in disparate treatment of African-American, and
Has adopted facially neutral policies and practices that have a disparate discriminatory impact on African-Americans in residential mortgages.

It is beyond dispute the African American community has long been the victim of discriminatory banking practices. Generations of African Americans have been deprived the opportunity to participate in the American dream by banks simply because of the color of their skin, or place in unfavorable loans that decimate them financially.

Efforts to Achieve Voluntary Compliance: -42 U.S.C. § 2000d-1. See Alabama NAACP State Conference of Branches v. Wallace, 269 F. Supp. 346, 351 (M.D. Ala. 1967.

Violation of NYS Banking Laws §§ 595-a Section 6.1: Mortgage Fraud, Consumer Protection.

Subject to Licensing by the Superintendent of under Article XIII-B of the banking Laws.
Violation NYS Banking Laws Article 12-D
NYS Banking Complaint #03 M 1874 August 22, 2003 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 695-697).

NYS 2nd Complaint # 04 M 987 May 11, 2004 June 8, 2004 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 775-790 Complaint April 29, 2004.

September 29, 2003 NYS Banking Department (Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-792-811) (Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-796-799) Attorney General's Office, Shannon C. Hitt, Mediator File # CFA03A06396,(Ref. Court of Appeals & Appellate Div. Appendix Vol.2.P-800,808,811)

WSR03N01563 Respondent's response was the same as of August 22, 2003 to NYS Banking.

Petitioner's Complaint Letters (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 718-723; P.724-729). (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.558-561).

_X__CPLR5601 (a) Dissents on the law at the Appellate Division:

Reinaldo E. Rivera J.P., Howard Miller, John M. Leventhal, Cheryl E. Chambers, JJ., concur 4 Judges out of 9 Judges

Difference between majorities centered on conflicting interpretations of law (Compare , Scheer v. Koubek)69 NY2d 983 consequent Conclusion as to whether Wells Fargo made out a Prima Facie Case: Legal Question. Matter of Gardstein v Kemp & Beatley, Inc.

Cite: Fraudulent & Negligent Misrepresentation: Misrepresentation Act

1967. (Derry v. Peek) (Hedley Byrne v. Heller [1964] A.C. 465; Esso Petroleum Co. Ltd. V.

Mardon [1976] Q.B; Krakowski v. Eurolynx Properties Ltd (1995) 183 CLR 563.

Facile Princeps: The evidence in the Court of Appeal 2010-331 & Appellate Div. Appendix 2008-0982 put forth in my defense show Respondent never rendered truthful, proof, evidence to support, substantiate their claim entitlement for Foreclosure & Sale, other Decisions and Orders by law outlined in this entire matter.

Dispute between majority and dissent focuses on (Sufficiency) not (Weight) of the Evidence to support finding of corporate oppression of shareholder:

Cite: Legal Question. Matter Merrill v Albany Med. Center Hosp. Dissent predicated
On unpreserved issues. Matter of Cindy M.G. v. Michael A.

The Court of Appeals has noted that even where a party's motion papers in opposition to a motion for summary judgment are "worthless", before summary judgment will be granted to the Wells Fargo such party must establish its prima facie entitlement to judgment as a matter of law (Trepuk v. Frank, 56 NY2d

779 [1982], revsd for reasons stated in op. Of dissent in A.D., 86 AD2d 578, 579 [1st Dept. 1982] See also, Alvarez v. Prospect Hospital, 68 NY2d 320 [1986} Wingrad v. NYU Medical Center, 64 NY2d 851 [1985].

The Court of Appeals stated this succinctly: "before considering whether Petitioner, (Perez} has put forth sufficient proof to defeat Respondent (Wells Fargo/Option One Mortgage) motion for summary judgment, the issue of whether Respondent has established its entitlement of Motion Order Granting Summary Judgment must first be addressed". (Olan v. Farrell Lines Inc., 64 NY2d 1092, 1093 [1985.

Legal Standing - Threshold Issue Appeal# 2008-09852. The Appellate Division rule Petitioner did not raise the issue of Legal standing in Pre-Answer.

Petitioner Response: "Never waived claim and such claims, rights should not have been waived,

relinquish by any of the three (3) attorneys in their legal expertise retained to defend and protect should have raised all such issues with a vigorous defense.

Petitioner's Attorney of Record –Atty Carol Marks, Esq.

Factual evidence:

1. Wells Fargo Lack proper standing to have brought By CPLR 3215(f) Summons & Complaint (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 611-666) July 17, 2003 alleging Assignment "to be assigned" (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 658 Notice of Pendency of Action 7/17/03). Mortgage Assignment control #440340539 alleged recorded 03/12/04 Certified 12/03/08 Westchester County Land $ Records Office, Rm.345

(Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.592-595).

2. No legal, official NOI required by Notice of Intention to Foreclose under the Fair Foreclosure Act is a necessity. Proof required by Section 1303 (RPAPL) of the Real Property Actions and proceedings Law was given to Petitioner (Perez)) 30 Days prior or at the time that the summons and complaint was served July 17, 2003 Index #11365/03, on colored paper other than the color of the summons and complaint.

The Court must decide whether Respondent's inability to demonstrate such compliance with the NOI provision of the Fair Foreclosure Act requires the dismissal of Plaintiff's complaint.

a. Postal Service certified mail receipt indicating that Respondent sent the NOI via certified mail to Petitioner.

b. Postal Service returns receipt verifying that the Petitioner received the NOI; A certification of mailing signed by the bank employee who mailed the NOI.

"Where the facts permit conflicting inferences to be drawn, summary judgment must be denied" (Morris v. Lenox Hill Hospital, 232 Ad2d 184-5 [1st Dept. 1996]); any issue determination on a summary judgment is strictly prohibited (Straus v. New Wah Fung Corp., 269 AD2d 140 [1st Dept.2000]; Dollas v. W.R. Grace & Co., 225 AD2d 319 [1st Dept. 1996]; Cochrane v. Owens-Corning Fiberglas Corp., 209 AD 2d 557, 559-60 [1st Dept. 1995]; Rivera v.

NYC, 212 Ad2d 403 [1st Dept. 1995]; Tunsupong v. Bronx Lebanon Hospital,

213 AD2d 236-7 [1st Dept. 1995]; Harris v. NYC, 147 AD2d 186, 191 [1st Dept. 1989].

Respondent's June 30, 2003 letter(Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P.610).
Respondent's Reinstatement Quotes rendered July 22, 2003 & August 13,2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P.686-690).

Respondent Reinstatement Quotes is requesting Petitioner doubly pay Increment Amt. 651.00+2541.00 regular Mortgage payments already rendered totaling $3191.00/$3200.00 or should have been by Repayment Agreement 590.00+2541.00 totaling $3131.00 W/Overchg $60.00 . None of these Reinstatement Quotes for arrears demand payments represent existing

Repayment Agreement. Conflicting July 22,2003 requesting $10,183,84 for(4)arrears payments 2540.91 x4 one(1)late charge of 660.66(extortive & outrageous)as due & August 13,2003 arrears of 12,704.80 for (5) arrear payments(2540.96 x 5)

Late charges of 711.48(extortive & outrageous)

Respondent 's Monthly Statement 11/16/02 for late Fee charges (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 691).

Petitioner never owed late fees. All payments rendered to Respondent on any mortgage payment deemed late included a late fee charge of $52.00/53.00.

Section 6 of RESPA (12 U.S.C.2606) Consumer rights. Written request was questioned July 23, 2003 by Petitioner's Attorney Carol Marks request for Loan History to Respondent's employee Rolando Ragaas(Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.678-679).

Rendered: (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P.668) Option One Lexi Leland authorized Associate Ref. #51170 investor ID 666 July 30, 2003 was Verification of Mortgage next payment due 4/1/03.

Petitioner's first Credit Report received CDI-Info1, July 8, 2003 by a Real Estate Broker(Ref. Court of Appeal & Appellate Div. Appendix Vol.3.P.1012)stated last Payment, by Respondent as January,2003 (False) date, method of reporting information inserted June 2003 prior to Summons & Complaint of July 17, 2003.

On a motion for summary judgment, all that needs to be shown is the existence of triable issues of fact [cits.],and in making that determination, the court should draw all Reasonable inferences in favor of the non-moving party (Perez).

Judge Linda S. Jamieson 1st Decision March 22, 2004. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2P. 765-767).

Petitioners Payment Receipts W/ Breakdown of payments (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2 P. 607-609; 731-754).

Actual Fraud/Fraud In Fact, Fraud upon the Court via: misrepresentation concealment. Petitioner's Attorney of Record: Harry S. Stokes, Esq.

Respondent (Under Penalty of Perjury) bring forth with OOps! We forgot to tell the court the existence of Repayment Agreement.

Respondent's' Repayment Agreement, Faxed January 17, 2003 by Vincent Calderone (Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P. 599-606). (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P 756-763).

All payments totaling $7068.00 remitted to Respondent by Western Union Quick Collect. (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 &3.P.791 Western Union Verification).

MTCN#658-515-1246 12/23/02 $2691.00 declined by Respondent 01/02/03. Resent 01/06/2003 MTCN 658-540-2421;

November, 2002 remitted December 27, 2002 remitted $2600.00 MTCN 658-059-9464.

December, 2002 MTCN658-553-4852 informed by Mr. Calderone to send only $1795.00.

There was no need for forced deceptive establishment Repayment Agreement to be signed January 21, 2003 under the immediate threat of Foreclosure.

Additionally, the moving party (Wells Fargo/Option One Mortgage)must prove his case "clearly

and completely" (Curry v. Mackenzie, 239 NY 267, 269 [1924] before the opposing party can be required to show facts creating a triable issue of fact (Lurie v. Childs Hospital, 70 AD2d 1032 [3d Dept. 1979], Curry v. Mackenzie, supra, Sacramona v. Scalia, 36 AD2d 942 [1st Dept. 1971], O'Connor-Sullivan Inc. v. Otto, 283 AD 269 [3d Dept. 1954]).

Also of direct relevance to the case at bar is the rule that "In a motion for summary judgment, the moving party Respondent has the burden of setting forth evidentiary facts sufficient to establish its cause sufficiently to entitle him to Judgment as a matter of law; anything less requires a denial of the motion even where the opposing Petitioner 's papers are insufficient" (Coley v. Michelin Tire Corp., 99 AD2d 745,796 [2d Dept. 1984]).

Thus, where there is a "conflict" in "Testimony" it is "inappropriate" to "Grant a Summary Judgment Motion,

since to do so would require the court to weigh issues of credibility" (Botfeld v. City of New York, 162 AD2d 652 [2d Dept. 1990]).

In fact, it has even been held that where a movant has adduced "strong evidence" in support of motion for summary judgment, the motion must be denied when the opposing papers raise a real issue of material fact (Roman Maronite Catholic Church v. Metropolitan Heat & Power Co. Inc., 137 Ad2d 513,514 [2d Dept. 1988]).

Respondent did not tender sufficient admissible evidence "No Loan History or Accounting Statement rendered to dispute Petitioners payments" to show that there were no material issues of fact, the burden was shifted to

Petitioner to produce admissible proof establishing that there was a material issue of fact.

Petitioner's 1st Attorney Carol Mark mailing of June 2003's payment (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.667).

Respondent 's Attorney Greq Tabakin Claimed Return of June 2003 payment, August 12, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.692-694).

Parenthetically, it is a settled precedent that the facts should be viewed in a light more favorable to the opposing party by a court when considering a summary judgment motion (Sillman v. 20th Century Fox Corp., 3 NY2 d 295 [1957], Nestlerode v. Federal Ins. Co., 66 AD2d 504 4th Dept. 1979]). And, a "deficiency in the affidavits on both sides cuts against the Respondent rather than against the Petitioner[Perez] because it is the moving party who is seeking summary judgment, and the burden rests on him to establish affirmatively that his adversary does not have a viable cause of action against him" (O'Connor-Sullivan Inc. v. Otto, supra).

In this regard, the Court of Appeals has cautioned that it is improper for a court considering a summary judgment motion to make any determination as to the merits of any of the parties' claims despite any personal feelings the court may have in this regard (Black v. Chittenden, 69 NY2d 665 [1986]). Indeed, even where a court finds a particular claim to be "questionable', the court cannot Grant a motion for summary judgment where there exists some dispute or conflict on a material Issue of fact pertinent to the case under review(Berliner v. Thompson, 149 AD2d 887,889 [3rd Dept. 1989]).

2nd Decision and Order, Hon. Linda S. Jamieson rendered April 12, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4. P.1339-1345).

Respondent's Attorney Mikelle V. Komor September 30, 2004: Affirmation in Support of Motion to Renew (Ref. Court of Appeal & Appellate Div. Appendix Vol.2&3 P.813-939).

PLAINTIFF IS ENTITLED TO RENEWAL OF THE MOTION FOR SUMMARY JUDGMENT CPLR 2221(e)provides that: A motion for leave to renew: shall be identified specifically as such; based on new facts not offered on prior motion that would change the prior determination or shall demonstrate there has been a change in the law that would change The prior determination: and shall contain reasonable justification for the failure to present such fact on the prior motion.

Petitioner Argument:

A. What was Respondent reasonable justification which never questioned by the Court or attorneys.
B. When was a default declared after the establishment of Repayment Agreement to which Petitioner was abiding by?
C. Why such issue was not brought forth on Summons & Complaint.

REASON: acknowledgment of such Agreement in effect" would have voided Respondent any grounds to have commence such proceeding via Summons Complaint.

Conflicting Question Prosecution of: Greq Tabakin Request for Order Granting Summary Judgment W/Affidavit of Farah Torres-Carr, Foreclosure Specialist Dated November 6, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P. 700—710). (Extortive) Allegation -Petitioner made no payments since October 1, 2002 Now it's one (1) Payment (June 2003).

PLAINTIFF'S AWARENESS OF: NYS Banking: Complaint #03 M 1874 August 22, 2003 (Ref.Court of Appeal & Appellate Div. Appendix 2. P. 695-697).

THEREFORE: This was not/is not and never has been "New Found evidence or New Facts not offered on the prior Motion" of Repayment Agreement all issues was brought to the attention of Respondent.

Attorney Harry Stokes Supplemental Affirmation in Opposition to Respondent's Notice of Motion to Renew October 15, 2004 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. P. 944-960).

Respondent's Attorney Mikelle V. Komor, Reply Affirmation to Petitioner's Attorney Harry Stokes Supplemental Affirmation in Opposition to Notice of Motion To Renew October 28, 2004(Ref. Court of Appeal & Appellate Div. Appendix Vol.2 &3 P.940-943).

Attorney Harry Stokes November 17, 2004 Request for Valid Accounting and Pay-off figure(Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. 961).

Petitioner's December 10, 2004 fwding of Credit Files to Atty. Harry Stokes for Respondent's Atty. Mikelle Komor (Ref. Court of Appeal & Appellate Div. Appendix Vol. 3. 962-964).

January 27, 2005 Court Hearing

Respondent's Attorney Mike V. Komor request Notice of Motion to Renew January 27, 2005 to be heard February 24, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.3. P. 1098-1289).

Respondent' s Attorney Mikelle V. Komor should not have been allowed to Renew such Motion by Judge Linda S. Jamieson without Attorney of Record Harry Stokes Missing in Action by misconduct and not in attendance. Matter should have been postponed.

Equal Credit Opportunity Act U.S.C §1981 et seq.

Reporting Act: §602. Congressional Findings statement of purpose {15 U.S.C.$1681](a) Accuracy. fairness of Credit reporting. Congress findings: (1)(2) (3) (4) the banking system is dependent upon fair, accurate credit reporting. §603{15 U.S.C. § 1681] (h)(2) (6) Adverse Action to interests of the consumer.

(Ref. Court of Appeal & Appellate Div. Appendix Vol.3.P.1012-1038 Credit Files)Plaintiff's Erroneous conflicting insertions to Petitioners(Perez)Credit Files.

§617 Civil liability non compliance {15 U.S.C. § 1681c] In the case of (A)$623. Responsibilities of furnisher of information to consumer Reporting agencies enforcement {15 U.S.C. $ 1681 2](1)(A)(B(i)(ii)(C)

(2)Duty to correct and update information: (A)(B)(3) upon notice of dispute: (1) (A)(B) (C)(D).

"Plaintiff had 30 days to correct discrepancies to which they did not"

Respondent's Attorney informed the court Judge Jamieson upon the mysterious absence of Petitioner's Attorney Harry Stokes.there was no there was no discrepancies in Petitioners Credit file which was outstanding Issue

Respondent' Attorney knew Mr. Stokes would not be in Court.

Petitioner must stand for self -Petitioner's Opposition/Affirmation Request for Trail February 5, 2005

Credit Files re-rendered to Respondent (Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 985-1090).

Petitioner Atty Harry Stokes re-emerge Affirmation in Opposition, February 24, 2005(Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 1091-1097).

NYS 2nd Complaint # 04 M 987 May 11, 2004 June 8, 2004 (Ref. Court of Appeal & Appellate Div. Appendix 2. P. 775-790). To Appellant Complaint April 29, 2004.

Issues under discussion: Forced Loan History Respondent's late fee generating every week on History and discrepancies of Petitioner's rendered payments .

Spoilation litigation evidence See 166 N.J. 391.

Respondent cannot forcibly declare a default based on Attorney Mikelle V, Komor rendering a defaced motion to hide pertinent evidence re: Repayment Agreement and

tampering with Petitioner's June 2003's payment (Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P.1421 in question by inserting Void to create a controversy to obtain Summary Judgment.

No other payment in The Casebook File to justify this allegation and the entertainment for Judge Linda S. Jamieson to even have consider in Decision & Order (Ref. Court of Appeal & Appellate Div. Appendix Vol. P 1339-1342) as an issue not there March 22, 2004 Decision and Order.

Not marked VOID when remitted by :

Petitioner 's Attorney Carol Mark mailing of June 2003's payment (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.667).

Not marked VOID when retuned by :

Respondent's Attorney Greq Tabakin Claimed Return of June 2003 payment, Dated August 12, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P.692-694).

Payment never returned backed to the Court after received backed by Petitioner which immediately taken to Petitioner's Attorney Carol Marks Office.

PETITIONER'S NEW ATTORNEY OF RECORD after dismissal of Harry Stokes- Patricia Ann Mooney, Esq. Attorney Patricia Ann Mooney Affirmation in Opposition W/Petitioner Affirmation in Opposition to Plaintiff's Motion for Summary Judgment and Order of Reference, September 23, 2005(Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1558-1638).

Respondent's Atty. Mikelle, Komor Notice of Motion for Summary Judgment September 23, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1346-1526). And Order of Reference October 12. 2005) again moved for an Order striking Defendant's Answer and Affirmative defenses and appointing a referee to compute the sums due to Plaintiff.

Atty. Patricia Mooneys (Ref. Court of Appeal & Appellate Div. Appendix vol.4.P.1549-1557 Professional service Statement) informed me Respondent's Atty. Mikelle Komor, didn't have a problem with the short pay-off but the Company, MGIC Insurance, 270 East Kilbourn Avenue, Milwaukee,Wisconsin 53202 that held the PMI Insurance Certificate #16433008, refused such offer. I faxed her the document from mortgage validating there was no PMI Insurance on said mortgage with 20% down-payment paid $73,000 on property ($365,000).

Petitioner tried every avenue to get from under Wells Fargo and save our Home.

Southern Star Mortgage, Ralston Calder and many more (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 768-774).

Petitioner choose 1st Capital Mortgage Company 3125 Veterans Memorial Highway, Suite 3, Ronkonkoma, NY 11779 to refinance

(Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P. 1527-1548) submitted to the Court through Attorney Randall Chiera of Chiera & Associates a short-payoff letter from Carmine Notaro.

Respondent's destruction to Petitioner's Credit Files (Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P 1012-1038) to prevent any type of Refinancing.

Answer filed November 1, 2005 by Bernice Perez, reluctant Attorney Patricia Mooney (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.1558-1638).

Respondent Attorney Mikelle Komor November 7, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1639-1644).

Cite: Attorney Komor 's Statements #6, #7, #8

Contention Petitionre tried to force her client to take short pay off. Amount owed due on Mortgage originally 289,

994.00 at now $425,000 . When Appraisal (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.315-335) value of $645,000 was submitted to the Court regarding Refinance (Ref. Court of Appeal & Appellate Div. Appendix Vol.4.P.1527-1548) Respondent Attorney stated would rather repossess/foreclose sell the property, be paid in full which would have been to the enrichment of Respondent.

Larceny Theft: Model Penal Code §223. 53 So. 2d 533, 536. Statue of : Westminster I. c. 15 (1275).

Violation home Equity Protection Act.

This effectively dilutes the equity from the property places the Petitioner in jeopardy of further default, and puts the Petitioner in the position of spending years paying off additional Loan balances without developing any equity.

Court Required: To determined whether disputed material issues of fact existed prior to determining whether Summary Judgment could be granted on constitutional claims; threshold finality inquiry; Matter of Morley v. Town of Oswegatchie, 70NY2d 925.

Summary Judgment Standard was not properly granted. (Tainted Process) Respondent did not establish their cause of action or defense sufficiently to warrant the Supreme Court, Hon. Linda S. Jamieson, Granting Summary Judgment December 16, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.P.1653-1654) as a matter of Law in Plaintiff's favor.

Disciplinary rule 1-102 200.3] Malicious Prosecutorial Misconduct, Ineffective and inadequate Counsel.

There is no Character assassination " buried here amid a stream of consciousness attacks on the character of Respondent/attorneys involved," as stated by Respondent's Attorney Michael Hanusek the record, actions and behavior of all remotely connected speaks for itself:

Petitioner is not guilty of Libel or Slander and can truthfully and honestly face anyone of my accused in any court of Law to all my defenses.

A lawyer or Law Firm shall not: Violate a Disciplinary Rule.

1. Circumvent a Disciplinary Rule through actions of another.
2. Engage in conduct in illegal conduct involving dishonesty, Fraud, deceit, or misrepresentation.
3. Engage in conduct that is prejudicial to the administration of justice.

Respondent's Attorneys Fein, Such, Kahn, Sheperd should be fully investigated for their Procedural and Judicial tactics, practices and behavior.

Carol Marks of Ross & Mark, LLP, 559 Gramatan Avenue, Mount Vernon, New York, 10552- Attorney of Records On Summons and complaint for Petitioner.

No known impariarties-mutual severance with this attorney.

Attorney Harry M. Stokes, 49 Raemont Road, P.O. Box 192, Granite Springs, New York 10527-0192.

Petitioner January 7-28, 2005 trying to contact Harry Stokes(Ref. Court of Appeal & Appellate Div. Appendix Vol.3 P.965-984).

Atty Harry Stokes Letter April 8,2005 to Petitioner's : Request returns Case File & discharge himself as Attorney(Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1316-1317).

Petitioner's notification to Court April 21, 2005 re: Change of Attorney (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1318-1338).

Atty. Harry Stokes Motion to Withdraw as Counsel, May 3, 2005(Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P. 1343-1345).

Chiera Assoc., Patricia A. Mooney Esq., 800 Central Park Avenue, Scarsdale New York.
Order to Show Cause, May 2, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P 1655-1660).

Petitioner's Reply Affirmation May 15, 2006 to Attorney Patricia Ann Mooney Order to Show Cause, May 2, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P.1661-1668).

Judge Linda S. Jamieson Decision & Order to Order to Show Cause May 31, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P 1669-1672).

A lawyer should be temperate and dignified, and should refrain from all illegal and morally reprehensible conduct. The lawyer's position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplies respect for law:

APPELLATE DIVISION-2nd Department

Weigh of the evidence: The evidence presented by Petitioner regarding Respondent's documentations, contradictory actions, behavior, conflicting allegations depending on what court Respondent is in Res ipsa Loquitur (speaks for itself) and a new Trial should be granted.

Difference between majority and dissent based on differing view of underlying facts, not applicable legal standard]; Karger, Powers of the New York Court of Appeals § 6:15,, at 203-207 [rev 3d. ed]).

In deciding a case a court should find facts on the basis of the evidence presented then apply the **law** to those facts. The evidence presented by Petitioner throughout this matter prove Respondent never had TRUE entitlement, justification for obtainment of any order Decision, commencement of this proceeding in these court of Law.

Constitutional Question CPLR 5601(b)(1): VII Amendment Right

Whether a substantial constitutional question is presented is a determination that must be made on a case by case basis. The Court has examined the nature of the constitutional interest at stake, the novelty of the constitutional claim, whether the argument raised may have merit, and whether a basis has been established for distinguishing a State Constitutional claim from a Federal constitutional claim.

State &Constitutional claim

Violation Petitioner's V Amendment Rights

Cite: Bill of Rights -Trial by jury shall be preserve when value in controversy exceed $20.00. Due Process Obligation of contracts taking of property; prohibited discrimination; Jury trail in Civil Cases.

Petitioner's many request for trial by Jury of my peers in this matter has been constantly denied by Respondent's continuous opposition to the court to deny such request and contention: The granting of Summary Judgment is the procedural equivalent of a trial and results in a final judgment on the merits Collins v Bertram Yacht Corp 42, NY2D 1033, 399NYSD 202

Petitioner admitted and never denied that her contentions were not properly outline as stated by: Appellate Division-2nd Department Decision May 11, 2007 on Petitioner's prior Appeal, January 13, 2006 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4. P.1673-1674).

Such lost was not due to Petitioner rendering to any court of law false illegible documentation to substantiate or validate my defenses. Petitioner fought this matter in a defensive manner not a vindictive manner to the best of my ability. Petitioner responded to all Respondent's fraudulent, false allegations, summons thru and by an attorney until forced to precede Pro se due to Prosecutorial Misconduct, mistrust and malicious Prosecution.

VIII Amendment & XIV Amendment Rights due to: Cite: (See Louisiana ex rel. v. Resweber, 329 U.S. 459 (1947) Suffer cruel & usual Punishment-

The Supreme Court assumed "arguendo" that cruel and unusual punishment clause applied to the states through the Due Process Clause of the XIV Amendment. Robinson v. California, 370 U.S. 660 (1962) Furman v. Georgia, 408 U.S. 238 (1972), Justice Brennan re: four Principles for determination "Cruel and unusual.

Respondent /attorneys in this matter caused injury to Petitioner to form a trusting relationship with

any attorney by such unethical behavior and prosecution and thus had to teach myself to be my own attorney.

> "After being "Thrown to the wolves. left to sink or swim with one week to file an Appeal, save our home, with no legal expertise, duress, health constraints creating the failure of 1st Appeal 2006-851 taken January 13, 2006.

The Court has stated that questions that have been "clearly resolved against an appellant's position*** lack the degree of substantiality necessary to sustain an appeal As of right under CPLR 5601(b) (1)" Matter of David A.C. 43 NMY2d 708, 709.

The doctrine forecloses re-examination of an issue "Absent a showing of subsequent evidence or change of Law" (J-Mar Serv. Ctr,. Inc. v Mahoney Conner & Hussay, 45 AD3d 809, 809, quoting Matter of Yeamierre v Gutman,

57 AD2d 898, 899).And rested on an Independent non constitutional ground. Matter of Fossella v. Dinkins.

Direct Involvement: Karger, supra § 7:8, 7-9-7:10, at 231-243:

The Legal & Constitutional issues were raised and preserved: Judge Linda S. Jamieson 1st Decision March 22, 2004. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2P. 765-767).

> "The Court is not able to determine if Respondent was justified in seeking to hold the Petitioner in default when the instant action was Commenced." (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. 611-666).

Matter of Schulz v State of New York, 81 NY2d 336,344; Matter of Shannon B., 70 NY2d 458, 462. Matter of Skenesborough Stone, Inc. v. Village of Whitehall, 95 NY2d 902.

Subsequent Evidence :

SUBSTANTIALITY: :Karger, supra § 7:5, at 226-228.

The (Appellate Division –Second Department 2008-09852) stated: "Moreover, Appellant provides no basis for re-examining those issues".

The Appellate Division(see Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590) affirm decision Dated June 25, 2008 to 1st Appeal 2006-851 of the lower court Order & Decision.

Federal Claim: Extrinsic Fraud; Fraud in Fact; Actual Fraud; Fraud in the Inducement; Intrinsic Fraud; Fraud in the Factum; Fraud upon the Judicial System to Undermine the integrity of this Judicial System.

Respondent's Attorney Mikelle V.Komor own testament deceptively caused Appellate Division –2nd Department

Decision & Order May 11, 2007 to Affirmed Supreme Court, Hon. Judge Linda S. Jamieson Decision for Summary Judgment December 16, 2006

A. In Respondent Brief on prior Appeal 2006-851 August 9, 2006 P. 16.17 Respondent's Attorney Mikelle V.Komor own testament all needed to be surrendered for Summary Judgment was ownership rights " Legal Standing" by Mortgage Assignments # 440340539 Certified 12/10/2009. Respondent's Right to sue questionable must be decided to resolve this Controversy.

B. In Respondent Brief on prior Appeal 2006-851 August 9, 2006 P.16,17 Respondent 's Attorney Mikelle V.Komor own testament: "Petitioner made no Payment for June 2003 thus Summary Judgment was granted. (False, Condtradictory & Conflicting) (Ref. Court of Appeal & Appellate Div. Appendix Vol.2

P.692-694).Respondent's Attorney Greg P. Tabakin return of June Payment.

(Ref. Court of Appeal & Appellate Div. Appendix Vol.2.P. 667) Petitioner's Carol Mark Mailing of June 2003 Payment.

C. Attorney Mikelle Komor Testament November 7, 2005 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1639-1644) having June payment returned by Attorney's Office and obtaining Summary Judgment which Petitioner Filed Appeal 2006-851.

Result of Casebook Transactions printed 10/14/2008 & 3/30/2009 Westchester County Clerks Office There is still No Notice of Entry by Respondent 's Attorney Mikelle V. Komor or Petitioner's Attorney Patricia A. Mooney which validate never rendered as alleged to Petitioner The Granting of Summary Judgment 12/16/ 2005.

On the other hand, a constitutional argument need not prevail on the merits to support an appeal on constitutional grounds. Rose v. Moody, 83 NY2d 65,69.

Statutory limitations grounds:

Fraudulent Conveyances in violation of Debtor & Creditor Law §§ 273,275, 276-Time barred-six year statue of limitation.

Appellate & Court of Appeal

NOTICE OF PENDENCY: Civil Practice Law and Rules Section 6511, 6513, CPLR, 6513(a),(b), 6514 Article 65 of CPLR .

Cite: In the Matter of Sakow, 97 N.Y. 2d 436, 441 (2002); 13 Weinstein, Korn & Miller, NY Civ. Prac, §6513.04 (2000); Israelson v. Bradley, 308 NY 511, 516 (1955). If the terms are not met, the privilege is at an end.

RPAPL §1331 Failure to comply with the filing requirement "precludes entry of Final Judgment".

Cite: Martini v. Charles Rogers.

Cite: Second Department Affirm: Nassau County Supreme Court Justice Roy S. Mahon in EMC Mortgage Corp. v. Stanley Stewart

A notice of Pendency is effective for a period of three years from the date of filing CPRL §6513.

A. An order to extend a notice of pendency must be filed, recorded, and indexed before the prior notice of pendency has expired.

B. HOWEVER: A Conference was scheduled On July 25, 2006 Westchester County Supreme Court 111. Martin

C. Luther King Jr. Boulevard, White Plains New York Hon. Judge Linda S. Jamieson, Room 1401 since assigned to Matrimonial Court.

Respondent's Attorney Mikelle V. Komor informed the Legal Assistance newly assigned Judge William S. Giacomo, Respondent was withdrawing their Motion for Foreclosure and Sale filed April 17, 2006.

Respondent's Attorney Mikelle V. Komor did not request an extension, renewal of such Notice of Pendency (Original July 17, 2003- July 2006) which by expiration, became ineffective-cannot be revived on the same cause of action or claim.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176)Renewed Notice of Pendency 4/7/08 (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.50)

The complaint herein and due Notice of Pendency of this action containing all the particulars required to be stated therein was duly filed in the Office of the Clerk of the County of Westchester on 04/07/08 was only rendered to Petitioner in this motion on July 3, 2008 which has a 2 year lapse (July17, 2006- July 17 2008) and by expiration

became ineffective cannot be revived on the same cause of action or claim.

Respondent's Attorney Jace Mccolley's incorporated affidavit of Joyce Bonner , Sr. Legal Action Specialist Vol.1. P. 86-92 attests and mirror to the same false, fraudulent, deceptive conflicting, contradictory allegations and controversy of defaulted on Mortgage of no payments since October 1, 2002 is totally false and brought rise to the Issues in this matter:

Respondent needs to justify the issues to this allegation regarding Petitioner's payments October 1, 2002 or Default of June 2003 Payment to resolve this controversy.

Summons & Complaint - Respondent' s Attorney Greg Tabakin Affidavit of Farah Torres-Carr, Foreclosure Specialist November 6, 2003 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 2.P. 700-710).

1. Respondent's Atty. Mikelle, Komor Notice of Motion for Summary Judgment and Order of Reference, (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1346-1526) incorporated affidavit of Joyce Bonner , Sr. Legal Action Specialist (Ref. Court of Appeal & Appellate Div. Appendix Vol.4 P 1354-1360).

Respondent's Attorney's Jace McColley's Affirmation of Regularity in support for Judgment of Foreclosure and Sale and Attorneys' Fees states: Petitioner (Perez) duly served with the complaint have not served any answer or appeared to the complaint and the time therefore have expired; except through her former Attorney Carol R. Mark,Esq. filed contested answer, and said answer was struck by the Court granting Summary Judgment filed entered on 12/16/2005.

Plaintiff's Attorney Fee's should be denied.

Appendix nor Casebook does not substantiate such contention.

Petitioner's- 1st Answer-Affirmation In Opposition Dated & Stamped Westchester County Clerk July 15, 2008 to Respondent's Attorney Jace McColley, Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 177-369).

Petitioner's- 2nd Answer-Affirmation In Opposition Stamped Westchester County Clerk July 17, 2008 to: Attorney Jace McColley, Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 371-476).

Attorney Jace McColley, served Petitioner November 14, 2008 with Notice of Entry (Ref. Court of Appeal & Appellate Div. Appendix Vol. 1. P. 26-39) decision of Judge Bellatonio Dated September 24, 2008 Foreclosure and Sale entered Westchester County Clerks Office November 17, 2008 w/Affidavit of Service by process server Jill Eckenrode, legal Assistant of Fein Such and Kahn &

Shepard sworned/ notarized October 29,2008 by Plaintiff's Attorney is Questionable.

Petitioner had obtained decision of Judge Bellatonio September 24, 2008 for Foreclosure and Sale (to keep Time Chain in tact) from Westchester County Clerk's Office and Appeal filed Oct 21, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol. 1. P.5-25).

The Court of Appeals and Appellate Division case law makes it abundantly clear that "[s]tanding to sue is critical to the proper functioning of the judicial system. It is a threshold issue."Saratoga County Chamber of Commerce, Inc. v Pataki. 100NYS2d 801,812(2003), cert. Denied US 1017 (2003), See also Household Finance Realty Corp. of New York v. Wynn, 19 AD3d 545 (2d Dept 2005); Sears Mortgage Corp. v Yahhobi, 19 AD3d 527 (2d Dept 2005); U.S. Bank Trust Nat. Ass'n Trustee v Butti, 16 AD3d 408 (2d Dept

2005);First Union Mortgage Corp. v Fern 298 AD2d 490 (2d Dept 2002);Village Bank v Wild Oaks Holdings, Inc., 196 Ad2d 812 (2d Dept 1993).

Legal Standing, subject matter jurisdiction, issue whether declaratory judgment action is proper vehicle to test constitutionality of legislative enactment. Kerrigan v. Kenny 64 NY2d 1109.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176)

Plaintiff Affidavit of Facts didn't have a Certificate of Conformity and comply with CPLR 3215. A Chain of Title and all applicable deeds must be submitted with this application. "if Respondent is not the original Mortgage Holder on original mortgage the names of the original mortgagee and a recital of all assignments in the chains of Title must be submitted".

Signature of the property owner(s) must be notarized on this application Form.

PLAINTIFF LACKS STANDING CPLR § 3215 (f): (d) Adjudication of Plaintiff's breach of Duty.

Mortgage Assignment(secured debt)that lack possession or formal Assignment of Note (unsecured debt)cannot force Sale of the property to satisfy debt and thus be Foreclosed upon.

Mortgage Assignment must be accompanied by Note.

Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div.Appendix Vol.1.P. 40-176) Vol.1.P.107 P.157 Blacked-out unreadable Bar Code recorded on 03/08/02 as Holder under control #420580426 Type of Instrument MTGB Serial #C850454).(Certified by Petitioner (Ref. Court of Appeal & Appellate Div.

Appendix Vol.2. P.569-584)12/10/08 Westchester County Clerks Office Land Records, Rm. 345 Assignment For the sum of $292,000.

Petitioner never received notification of a 'Goodbye letter from First Alternative Mortgage who has never been before this Court in any proceedings and law Prohibits- 3rd Party Standing. Nor received a "Hello" regarding any transfer of mortgage.

(Ref. Respondent Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale (Ref. Court of Appeal & Appellate Div.Appendix Vol.1.P. 40-176) Vol. 1. P.117-119; P167 Blacked out unreadable Bar Code Assignment 430870131) (Ref. Court of Appeal & Appellate Div. Appendix Vol2. P. 585-586 Pertitioner Certified 12.03/08).

(Ref. Court of Appeal & Appellate Div. Appendix Vol. 2. P. 587-591 Servicing Notification #331005398 January 4, 2002) Servicer of Mortgage ONLY.

Whether Respondent Wells Fargo Option One was justified in copying Appellant-Defendant name/and or initial (BP) and posting to another document to create, establish, execute a Fraudulent Mortgage transfer.

Plaintiff's Attorney Jace McColley, Esq., Notice of Motion For Judgment of Foreclosure and Sale(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P. 40-176).

The inclusion of Assignment 440340539 Wells Fargo stated(to be assigned always questionable) and acquired Summary Judgment December 16, 2005 alleged recorded March 12, 2004 Westchester County Clerks Office Land & Records, Rm. 345(Ref. Court of Appeal & Appellate Div. Appendix

Vol.2.P.592-595 Petitioner Certified 12/3/08) is now totally omitted entirely in this motion. Why is that?

Judgment of Foreclosure and Sale September 24, 2008 Hon. Arazio Bellantonio (Ref. Court of Appeal & Appellate Div. Appendix Vol 1. P.15-20; P.31-36).

Notice of Foreclosure Sale December 15, 2008, Referee ($528,086.87) Plaintiff's Referee Oath & Report Theodore John Brundage, Esq. 500 Mamaroneck Avenue, Suite 320. Harrison, NY 10528 received 11/10/2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.562-563).

Order to Show Cause & Stay Foreclosure & Sale.

Petitioner's Attorney Jan Riley Order to Show Cause Hon. Orazio R. Bellantonio, J.S.C Dated: December 12, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2. P. 477-525).

Respondent Affirmation In Opposition to Order to Show Cause December 30, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 .P 526-557).

Petitioner Attorney Jan Riley Reply Affirmation January 6, 2009 to Respondent's Affirmation In Opposition to Order to Show Cause December 30, 2008 (Ref. Court of Appeal & Appellate Div. Appendix Vol.2 P.558

__CPLR5601 (b) (2): Constitutional ground: Direct Appeal from the Court of Original Instance .

The only question involved must be the constitutionality of a statutory provision: where issues are involved that must be resolved in addition to the constitutional question the appeal is transferred to the Appellate Division (Jetro Cash and Carry Enters. V. State of New York Dept. of Taxation and Fin. []Town of Brookhaven v, State of New York 70 NY2d 990

Question of statutory interpretation that could be dispositive of constitutional question. New York State Club Assn. v. City of New York, 67 NY2d 717.

The Court (Appellate Division –Second Department 2008-09852) has stated: "the defendant's remaining contentions are either without merit or not properly before this court."

FALSE: The documents and evidence speaks for itself. All points argued are sufficient either in itself or in connection with the other points argued to resolve or should have resolved the entire case.

Thus does not constitute: Granting any decisions constitutionality or legally in this matter in favor of Respondent Wells Fargo.

X CPLR5601 (d) (2) Final Judgment, order, determination or award seeking review of a prior Appellate decision Order Appeal # 2006-851.

Pursuant CPLR 5501 Review of Summary Judgment

December 16, 2005, Supreme Court, Judge Linda S. Jamieson.

Was appellant served by adversary with a copy of the order, judgment or determination appealed from and notice of its entry?___YES__X_NO.

Did the Appellate Division deny a motion for Leave to Appeal to this Court in this case ___YES__X_NO.

RELATED MOTIONS AND APPLICATIONS:

Does any party to the appeal have any motions or applications related to this appeal pending in the Court of Appeals? _ _YES__X_NO.

If Yes, specify:

Does any party to the appeal have any motions or applications in this case currently pending in the court from which the appeal is taken ___YES_X_NO.

If Yes, Specify:

Is any party to the Appeal asserting that a statue is unconstitutional? _X__YES___NO.

Has Appellant met the requirement of Notice to the Solicitor General in Section of the
Rules 29.4 of the Supreme Court of the United States?
__X_YES___NO.

Has Appellant met the requirement of Notice to the Attorney General in Section 500.9 of the Rules of the Court of Appeals? __X_YES___NO.

ITEMS REQUIRED for STATEMENT of the Case are in the Appendix, Brief at the Court of Appeals & Appellate Division-Second Department.

A. Copy of the filed notice of Appeal, to Appellate-Division Second Department Docket Assigned #2008-09852

B. October 21, 2008.(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.P.5-25

C. Judgment of Foreclosure & Sale Hon. Arazio R. Bellantonio NY Supreme Court, Westchester County Index #11365/03.

D. W/ Notice of Entry November 17, 2008(Ref. Court of Appeal & Appellate Div. Appendix Vol.1.26-39).

E. Hon. Linda S. Jamieson Granting Summary Judgment December 16, 2005. (Ref. Court of Appeal & Appellate Div. Appendix Vol. 4.P 1645-1654).

Motion to Reargue: Court of Appeal Dated June 25, 2008 #514 Denied.

Motion Leave to Appeal: Court of Appeal Denied March 18, 2008 as "Untimely".

List all other related Appeals :

Wells Fargo Bank Minn., Assn. v Perez, 41 AD3d 590, 590) affirm decision June 25, 2008 to 1st Appeal 2006-851 (Ref. Court of Appeal & Appellate Div. Appendix Vol.4. P. 1645-1654).

Was testimony given at the hearing conducted by the Court of Appeals? No

If testimony was given the Court of Appeals & Appellate will send you a transcript.

Briefs, Appendix Rendered

Oral Argument: Petitioner , Bernice Perez, Pro se

Respondent , Plaintiff's Attorney

Michael S. Hanusek, Esq.,

Will not have oral argument.

Type of Brief to be filed: Formal Brief

Petitioner

Name: Bernice Perez

Address: 45 Oakland Avenue

Mt Vernon, New York 10552

Telephone: 347-346-1820

(914) 619-8684

Respondent

Name: Michael Hansquek. Esq.

Fein, Such, Kahn, LLP.

Address: 747 Chestnut Ridge Rd

Chestnut Ridge, NY Suite 200

Telephone: 845-371-4700

REASONS FOR GRANTING THE PETITION

Petitioner, Bernice Perez respectfully petition for a writ of Certiorari to review the judgment of the Appellate Division-Second Department &

Court of Appeals in this case. The State courts by Plaintiffs actions have embarked on an adhoc

exercise of judicial power which appears designed to thwart the will of the petitioner pursuit for Fair Justice.

Petitioner Certify under the penalty of Perjury: This request is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

The claims, defenses, and other legal contentions are warranted by existing law or by a non frivolous argument for extending , modifying , or reversing existing law or for establishing new law.

The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable

opportunity for further investigation or discovery, and Respondent in this matter for wrong doing complained of herein:

The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

SANCTIONS:

In general after notice and a reasonable opportunity to respond, the court determines that Rule 11 9B) has been violated. The court may impose an appropriate sanction on any Attorney, law firm, or party (Pro Se that violate the rule or is responsible for the violation.

The Petitioner (Perez) have been injured by the Respondent Wells Fargo/Option One Mortgage is in real

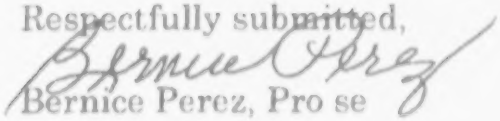
and imminent danger of suffering immediate injury as a result of Respondent (Wells)and/or their Attorneys unfair, fraudulent practices, unjust behavior , business practices conflicting abusive use of this Judicial System whereby constituting the rewarding of any Judgment/judgments and the unwarranted forcible taking of our home with this miscarriage of justice.

The Petitioner request this action seeking injunctive and other investigative relief against Wells Fargo/Option One Mortgage, from continuing their discriminatory practices, to compel their compliance with Federal law, and to ensure continuing compliance with applicable federal law.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,



Bernice Perez, Pro se

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